

405 KAR 7:040. General obligations of operators and permittees.

RELATES TO: KRS 350.050, 350.057, 350.060, 350.410, 350.450

STATUTORY AUTHORITY: KRS 350.020, 350.028, 350.057, 350.060, 350.090, 350.151, 350.465

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to promulgate rules and administrative regulations pertaining to surface coal mining and reclamation operations. This administrative regulation sets forth the basic requirements and general obligations of operators and permittees. This administrative regulation prescribes certain methods of disposal of materials and other obligations of operators and permittees.

Section 1. General Requirements for Permits and Exploration Approvals. (1) Requirement to obtain a permit. No person or operator shall engage in surface coal mining and reclamation operations without first having obtained from the cabinet a valid permit covering the area of land to be affected.

(2) Requirement to obtain exploration approval. Subject to the provisions of 405 KAR 8:020, no person or operator shall engage in coal exploration operations without first having filed a written notice of intention to explore or having obtained written approval from the cabinet.

(3) Requirement to comply with permit or exploration approval. A permittee or person issued a coal exploration approval shall comply with all terms and conditions placed upon the permit or exploration approval by the cabinet and with all plans submitted as part of the application approved by the cabinet.

Section 2. Disposal of Materials. A person or operator engaged in surface coal mining and reclamation operations shall not throw, pile, dump or permit the throwing, piling, dumping or otherwise placing of any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350, nor place such materials herein described in such a way that normal erosion or slides brought about by natural physical changes will permit such materials to go beyond or outside of an area of land which is under permit and for which bond has been posted pursuant to KRS Chapter 350.

Section 3. Unsafe Practices. (1) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(2) A person or operator engaged in surface coal mining and reclamation operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(3) Upon development of any emergency conditions which threaten the life, health, or property of the public, the operator shall immediately notify the persons whose life, health or property are so threatened, shall take any and all reasonable actions to eliminate the conditions creating the emergency, and shall immediately provide notice of the emergency conditions to the cabinet, to local law enforcement officials and to appropriate local government officials. Any emergency action taken by an operator pursuant to this subsection shall not relieve the operator of other obligations pursuant to 405 KAR Chapters 7 through 24 or of obligations under other applicable local, state or federal laws and regulations.

Section 4. Existing Structures on Areas Sought to be Permitted. (1) Except as provided in subsection (2) of this section, no application for a permit or a revision which proposes to use an existing

structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the cabinet finds, in writing, on the basis of complete information set forth in the complete application that:

(a) Irrespective of whether the structure meets the design requirements of 405 KAR Chapters 16 through 20, the existing structure will operate in compliance with the performance standards set forth in 405 KAR Chapters 16 through 20;

(b) No significant harm to the environment or public health or safety will result from the use of the structure; and

(c) The applicant will monitor the structure as required by the cabinet to determine compliance with the performance standards of 405 KAR Chapters 16 through 20.

(2) In the event the applicant fails to demonstrate that the existing structure meets the requirements of subsection (1) of this section, no application for a permit or revision which proposes to use such an existing structure in connection with or to facilitate the proposed coal exploration or surface coal mining and reclamation operation shall be approved unless the applicant demonstrates and the cabinet finds, in writing, on the basis of complete information set forth in the complete application that:

(a) Such existing structure complies with the performance standards of 405 KAR Chapter 1 or 3; and

(b) 405 KAR Chapters 16 through 20 require performance standards for such existing structure which either are not required by, or are more stringent than the performance standards of 405 KAR Chapter 1 or 3; and

(c) The applicant has included as a part of the application a compliance plan for modification or reconstruction of the structure demonstrating:

1. That the modification or reconstruction of the structure will bring the structure into compliance with the performance standards of 405 KAR Chapters 16 through 20 as soon as possible but not later than six (6) months from the date of issuance of the permit unless the applicant demonstrates to the satisfaction of the cabinet that a longer time is necessary due to the scope and nature of the reconstruction;

2. That the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

3. The applicant will monitor the structure as required by the cabinet to determine compliance with the performance standards of 405 KAR Chapters 16 through 20.

(d) Should the cabinet find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon or remove the existing structure in the manner provided in 405 KAR 16:010 or 405 KAR 18:010. The structure shall not be used for or to facilitate surface coal mining operations after the date a permanent program permit is required under 405 KAR 8:010.

(3) In the event that 405 KAR Chapter 1 or 3 prescribes a performance standard applicable to any such existing structure which performance standard has not been complied with by the applicant, no permit shall be issued by the cabinet unless the applicant shall have redesigned and reconstructed such existing structure in accordance with the design requirements of 405 KAR Chapters 16 through 20.

(4) Existing structures allowed to operate subsequent to permit approval as provided in subsection (1) of this section shall not include coal waste piles used either temporarily or permanently as dams or embankments. Such existing coal waste piles allowed to operate subsequent to permit approval as provided in subsection (2) of this section must be modified or reconstructed in order to comply with the design requirements of 405 KAR Chapters 16 through 20 in addition to the performance standards.

(5) Any structures or facilities which must be reconstructed pursuant to subsection (2) of this sec-

tion shall be reconstructed according to engineering plans prepared and certified by a registered professional engineer. Upon completion of reconstruction, the responsible engineer shall certify to the cabinet, within fourteen (14) days thereafter, that the reconstruction was performed in accordance with the approved design plans.

Section 5. Hazard Classifications for Impoundments. (1) For proposed new sedimentation ponds or other new impoundments and those proposed for reconstruction pursuant to Section 4(2) and (3) of this administrative regulation, the responsible design engineer shall determine the structure hazard classification according to the classification descriptions. For structures classified (B) - moderate hazard or (C) - high hazard, the operator shall obtain a permit from the cabinet pursuant to KRS 151.250, and administrative regulations adopted pursuant thereto, prior to beginning reconstruction or construction.

(2) Structure hazard classifications are as follows: The following broad classes of structures are established to permit the association of criteria with the damage that might result from a sudden major breach of the structure:

(a) Class (A); low hazard: structures located such that failure would cause loss of the structure itself but little or no additional damage to other property. Such structures will generally be located in rural or agricultural areas where failure may damage farm buildings other than residences, agricultural lands, or county roads.

(b) Class (B); moderate hazard: structures located such that failure may cause significant damage to property and project operation, but loss of human life is not envisioned. Such structures will generally be located in predominantly rural agricultural areas where failures may damage isolated homes, main highways or major railroads, or cause interruptions of use or service of relatively important public utilities.

(c) Class (C); high hazard: structures located such that failure may cause loss of life, or serious damage to homes, industrial or commercial buildings, important public utilities, main highways or major railroads. This classification must be used if failure would cause probable loss of human life.

(3) The responsible engineer shall determine the classification of the structure after considering the characteristics of the valley below the site and probable future development. Establishment of minimum criteria does not preclude provisions for greater safety when deemed necessary in the judgment of the engineer. Considerations other than those mentioned in the above classifications may require that the established minimum criteria be exceeded, as determined by the cabinet. A statement of the classification established by the responsible engineer shall be clearly shown on the first sheet of the design drawings.

(4) When structures are spaced so that the failure of an upper structure could endanger the safety of a lower structure, the possibility of a multiple failure must be considered in assigning the structure classification of the upstream structure.

Section 6. Reports Required. The operator shall submit such reports, documentation, certifications, or other information as the cabinet may require, or as may be required by KRS Chapter 350 and administrative regulations adopted pursuant thereto.

Section 7. Coal Exploration. (1) Any person conducting coal exploration on or after the date specified in Section 11 of this administrative regulation shall either file a Notice of Intention to Explore or obtain approval of the cabinet as required by 405 KAR 8:020.

(2) The coal exploration performance standards in 405 KAR 20:010 shall apply to coal exploration which substantially disturbs the natural land surface two (2) months after the date specified in Section 11 of this administrative regulation.

Section 8. Compliance with 405 KAR Chapters 7 through 24 does not relieve any person or operator from the obligation to comply with other applicable administrative regulations of the cabinet.

Section 9. The requirement to restore the approximate original contour of the land shall apply regardless of any reconstruction of any existing structure allowed pursuant to Section 4 of this administrative regulation.

Section 10. Certifications by Registered Professional Engineers. (1) A document required to be certified shall be rejected by the cabinet as incomplete if its accuracy is not so attested.

(2) Certification by a qualified registered professional engineer as required by 405 KAR means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of KRS Chapter 350 and 405 KAR, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Such certification shall not be construed to constitute a warranty or guarantee.

(3) Certification of maps, plans, and drawings. Where 405 KAR requires that maps, plans, and drawings be certified by a qualified registered professional engineer, the registered professional engineer shall certify:

(a) That the information or documentation contained in the map, plan, or drawing is correct as determined by accepted engineering practices; and

(b) That the map, plan or drawing includes all the information required by KRS Chapter 350 and 405 KAR.

(4) Certification of designs. Where 405 KAR requires that a qualified registered professional engineer design and certify a facility, he or she shall certify that:

(a) The design is in accordance with accepted engineering practices and recognized professional standards;

(b) The design complies with the design requirements of KRS Chapter 350 and 405 KAR; and

(c) Provided the facility is properly constructed, operated, and maintained, the design is adequate for the facility to meet the applicable performance standards of KRS Chapter 350 and 405 KAR insofar as such performance can reasonably be predicted by accepted engineering practices.

(5) Certification of construction.

(a) Where 405 KAR requires that a qualified registered professional engineer certify that a facility was constructed in accordance with the design approved by the cabinet, he or she shall certify:

1. That adequate inspections were conducted by the qualified registered professional engineer or by persons under his or her supervision;

2. That the construction was performed in accordance with accepted construction practices; and

3. Either that the facility was constructed in accordance with the design approved by the cabinet, or that the facility was constructed in accordance with the design approved by the cabinet except for certain minor deviations which will not adversely affect the performance of the facility nor render the facility in violation of KRS Chapter 350 and 405 KAR.

(b) Any minor deviations shall be described in the certification document and the effect of the deviations upon the performance of the facility shall be explained.

(c) As-built drawings shall be submitted as a part of the certification.

(6) Certification of maintenance. Where 405 KAR requires that a qualified registered professional engineer certify the maintenance of a structure, he or she shall certify that:

(a) An inspection of the structure was conducted by the registered professional engineer or by a person under his or her supervision; and

(b) Based on that inspection, the registered professional engineer has determined that the struc-

ture has been maintained as required by 405 KAR.

(7) Certifications shall be made in the form prescribed by the cabinet, and the cabinet may reject any certification which is not made in such form. (8 Ky.R. 1469; eff. 1-6-83.)